UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 20

EXEMPLAR, INC.

Employer

and Case 20-RC-149999

SERVICE EMPLOYEES
INTERNATIONAL UNION, LOCAL 87

Petitioner

DECISION AND DIRECTION OF ELECTION

By its Petition, as amended during the hearing in this matter, Service Employees International Union, Local 87 (Petitioner) seeks to represent a multi-facility unit of all full-time and regular part-time janitorial-services employees employed by Exemplar, Inc. (Employer) within the City of San Francisco. A hearing officer of the Board held a hearing, and Petitioner and Employer subsequently filed briefs with me.

The parties stipulated, and I find, that Petitioner is a labor organization within the meaning of the Act, and that the Employer is engaged in commerce within the meaning of the Act.

The parties disagree whether the petitioned-for multi-facility unit is an appropriate unit. The Employer contends that: 1.) its voluntary recognition of the Petitioner as the exclusive collective-bargaining representative of its employees at two adjacent federal buildings located at 630 Sansome Street and 555 Battery Street in San Francisco

(collectively, "the Sansome Complex")[1] should bar the instant petition; 2.) the Petition is tantamount to an *Armour–Globe* self-determination election, which is inappropriate here because the Employer has extended recognition to the Petitioner at the Sansome Complex; 3.) the existing single-facility (Sansome Complex) unit of employees is such an appropriate unit; 4.) there is a rebuttable presumption that a single-facility unit is appropriate; and 5.) Petitioner bears, but has not met, the burden to rebut the presumptive appropriateness of the existing single-facility unit by demonstrating that the employees at both facilities share a community of interest.

The Petitioner argues that where, as here, it seeks a multi-facility unit, the Board's single-facility presumption does not apply. In this regard, the Petitioner further contends that Respondent has not met its burden of showing that the petitioned-for multi-facility unit lacks the requisite community of interest.

I have considered the evidence and arguments presented by the parties on each of these issues. As discussed below, I have concluded that the Petitioner is entitled to seek Board certification of its status as the collective-bargaining representative of the appropriate existing single-facility unit, which includes the site supervisor. However, I conclude that the petitioned-for multi-facility unit is not appropriate because the Employer's UN Plaza employees do not share a sufficient community of interest with the existing single-facility unit and Petitioner has made no showing of interest among the unrepresented UN Plaza employees. I shall therefore direct that an election be held at the Employer's Sansome Complex, as set forth below.

[1] The Employer asserted at the hearing and in its brief that its adjoining service buildings, located at 630 Sansome St. and 555 Battery St. in San Francisco, constitute a single facility or "complex." In its brief, Petitioner agreed that these two facilities are essentially one facility. I take administrative notice that only a private alley separates the two buildings. Accordingly, and absent any dispute in this regard, I find that these two adjoining buildings constitute a single facility.

I. STATEMENT OF FACTS

The Employer provides janitorial, landscaping, and stone-care services to private and government-owned buildings at various locations throughout the United States. The Employer currently has contracts to provide those services at two locations in San Francisco: (1) at the General Services Administration (GSA) building located at 50 United Nations Plaza (UN Plaza); and (2) at the Sansome Complex. The UN Plaza and Sansome Complex locations are separated by a distance of approximately 2.1 miles.[2]

A. The UN Plaza Service Contract

The UN Plaza closed for renovations several years ago, and when it reopened, the Employer won the initial one-year service contract (Service Contract) for janitorial services at that building, commencing on July 1, 2013.[3] The Service Contract, by its terms, was scheduled to expire on June 30, 2014, but the parties have exercised the one-year-extension options contained therein. Currently, the Employer employs seven janitors at UN Plaza; six full-time and one part-time.[4] One of the six full-time employees is designated as the site supervisor.

The UN Plaza employees are paid $18.85 per hour, plus a Health and Welfare contribution of $1,154.31 per month for full-time employees, along with a pension

[2] For context, the City of San Francisco spans approximately 49 square miles.
[3] The record contains inconsistent testimony regarding the date that the UN Plaza location closed for renovations. One witness placed the closure in 2006, while Petitioner President Olga Miranda testified that a signatory employer, American Building Services, operated UN Plaza and the Sansome Complex as a single bargaining unit until January of 2011. This factual dispute is irrelevant to the issues presented herein.
[4] The Employer's President testified that it employs six full-time employees at UN Plaza, along with one on-call employee. While the Employer's San Francisco Regional Manager testified that there are six regular shifts at UN Plaza, including one from 2:30 p.m. to 7:00 p.m, the regularity and duration of the on-call employee's shift(s) is unclear.

payment of $1.15 per hour worked. Both the Health and Welfare and Pension contributions are paid directly to the employees.

The UN Plaza employees work on three shifts, all of which occur during business hours. The first shift of two employees begins at 6:00 a.m. The second shift of four employees begins at 11:00 a.m. The remaining one-employee shift runs from 2:30 p.m. -7:00 p.m. Because they work during the day, while the building is occupied, the UN Plaza employees receive thirty minutes of additional training on how to interact with tenants, including role-playing scenarios.

The UN Plaza location is a LEED[5] Platinum certified building. As part of maintaining this certification, the Employer is required to use low-noise equipment and low-odor, environmentally friendly cleaning products. The UN Plaza building also contains historical flooring surfaces that require special cleaning products and techniques.[6] Only one full-time and one on-call employee at UN Plaza are trained on cleaning the historical floor surfaces, although all UN Plaza employees are trained to avoid damaging the historical surfaces. The initial training for cleaning the historical surfaces in the UN Plaza building takes about two hours. The UN Plaza contract also includes some grounds maintenance, but there was no evidence adduced at the hearing as to the scope of this work, the extent of any special skills or equipment involved, or how that work is assigned.

[5] LEED stands for Leadership in Energy and Environmental Design, and reflects environmental standards developed and monitored by the U.S. Green Building Council, which is a non-governmental organization. http://www.usgbc.org/leed

[6] The Sansome Complex also has some areas with historical flooring, but those areas are serviced by a separate company operating under a different service contract.

B. The Sansome Complex Contract

The Employer commenced service under the Sansome Complex contract on March 1, 2015. It currently employs ten full-time janitors at this location, all of whom were employed by the predecessor janitorial-services contractor at that location. One of these full-time employees is also designated as the site supervisor. Four additional predecessor employees whom the Employer did not hire were placed on a preferential hiring list. The Employer voluntarily recognized Petitioner as the bargaining representative of the Sansome Complex unit when it obtained the services contract for that location. As of March 25, 2015, the Employer agreed to provide wages and benefits to its Sansome Complex employees in accordance with the terms of the Petitioner's multi-employer collective-bargaining agreement. The Employer has not, however, signed that collective-bargaining agreement.

The Sansome Complex employees are paid $ 0.40 more per hour than the UN Plaza employees. The Employer also pays Health & Welfare and Pension contributions to the SEIU General Employees Trust Fund and the SEIU National Industry Pension Fund on behalf of the Sansome Complex employees.[7] The Employer pays an amount equal to these contributions directly to its UN Plaza employees.

The ten Sansome Complex employees work on four shifts. One employee starts work at 6:30 a.m. Two employees start work at 7:30 a.m. Two more employees start

[7] At the hearing, Petitioner represented that the Employer's Health & Welfare and Pension contributions had not been accepted because it was not a signatory to the collective-bargaining agreement. The Employer attached to its post-hearing brief copies of two deposited checks purporting to cover those contributions for March 2015, along with an affidavit from the Employer's President, Martha Lutt, averring to their authenticity. Irrespective of whether the checks were accepted and cashed, it is undisputed that, at the very least, the Employer has tendered Fund contributions on behalf of its Sansome Complex employees.

work at 10:30 a.m. The remaining five employees start work at 3:00 p.m. and end work at 10:30 p.m.

The Sansome Complex has tighter security requirements than UN Plaza, which has a direct impact on employee access. For example, employees at Sansome Complex are required to carry an identification card, called a PIV card, which contains a computer chip. In addition, several of the floors at the Sansome Complex house government offices with additional security requirements. The Employer's employees who service those areas undergo additional security screening by the tenant agencies, which decide whether to grant the individual employee access to that area to perform janitorial services.

C. Management and Supervision

The Employer's senior manager is its President, Martha Lutt. Lutt receives management assistance from her Human Resources staff and the Employer's Chief Financial Officer. Answering directly to Lutt are several regional managers. Both facilities at issue here fall under the supervision of the Employer's Regional Manager for the San Francisco area. All disciplinary and personnel decisions are made by that Regional Manager in consultation with Lutt and other senior managers.

Each location has a site supervisor, who answers directly to the Regional Manager. Both site supervisors perform janitorial work in addition to their duties as site supervisor. The UN Plaza site supervisor can task other employees to perform work, while the Sansome Complex site supervisor cannot because, as the Employer explained, that supervisor is part of the bargaining unit. There was no evidence offered

as to whether the site supervisors are paid at a higher rate than the other employees or whether they are evaluated based on the performance of the other employees.

Lutt alone determines the Employer's labor policy, vacation, pay, and other terms and conditions of the employees' employment. The employees at both locations are required to comply with the Employer's Employee Handbook, except that the superseding terms of Petitioner's collective-bargaining agreement apply to employees at the Sansome Complex. For example, the Sansome Complex employees enjoy a different holiday schedule, albeit with the same number of holidays—ten at each facility.

The evidence adduced at the hearing shows that there is no interchange of employees between the two facilities. If necessary, the Regional Manager will work a shift to cover for an absent employee, but the Employer has never assigned an employee from one facility to work at the other. Employees' personnel records are maintained at their respective work locations.

II. ANALYSIS

Distilled down, the parties' positions and arguments essentially raise two issues: (1) whether the Employer's voluntary recognition of the Petitioner as the collective-bargaining representative of its employees at the Sansome Complex serves to bar the instant petition; and (2) whether the UN Plaza employees should be included in a single bargaining unit with the employees at the Sansome Complex. As explained more fully below, I have answered "no" to both questions.

A. The Employer's Voluntary Recognition of the Sansome Complex Unit Does Not Bar the Instant Petition.

Although the Employer has voluntarily recognized the Petitioner as the collective-bargaining representative of its employees at the Sansome Complex, the Petitioner may

nonetheless seek Board certification of its representative status with respect to those employees. See *General Box Co*., 82 NLRB 678, 682 (1949) ("[I]n view of the 1947 [Taft–Hartley] amendments, an employer's recognition of a union which asserts representative status does not, in and of itself, negate the existence of a question concerning representation.")

The Employer argues that the recognition bar should still apply because Petitioner's purpose is not to obtain certification of the existing unit but rather to expand the scope of the unit to include the employees at UN Plaza. This argument is unavailing, and is undercut by Petitioner's representation on the record that it wishes to proceed to election in the existing unit in the event that I direct an election there. Thus, I shall not entertain conjecture about the Petitioner's undeclared intentions.

In the alternative, the Employer argues that there is no genuine question concerning representation because the Petitioner already represents the Sansome Complex employees.[8] As discussed above, however, the Petitioner is entitled under Board law to seek certification of its representative status despite the Employer's voluntary recognition. *General Box Co.,* supra

In conclusion, I find that the Employer's voluntary recognition of the Union as the exclusive collective-bargaining representative of its employees at the Sansome Complex does not bar the instant petition.

[8] With regard to the Employer's *Armour-Globe* argument, as articulated, suffice it to say that the instant Petition is not tantamount to an *Armour-Globe* petition. However, as discussed below, the Board indeed prefers self-determination elections to "ordering an election in an enlarged voting group or unit whereby they might be engulfed by the votes of employees in an existing contractual unit." *Montana-Dakota Utilities, Co*., 110 NLRB 1056 (1954).

B. The Petitioned-For Unit is Not Appropriate.

I find that the petitioned-for multi-facility unit is not appropriate because the Employer's Sansome Complex employees lack a community of interest with the Employer's UN Plaza employees. The Board's procedure for determining an appropriate unit under Section 9(b) of the Act is to examine first the petitioned-for unit. If that unit is appropriate, then the inquiry into the appropriate unit ends. If the petitioned-for unit is not appropriate, the Board may examine the alternative units suggested by the parties, but it also has the discretion to select an appropriate unit that is different from the alternative proposals of the parties. See, e.g., *Overnite Transportation Co*., 331 NLRB 662, 663 (2000); *NLRB v. Lake County Assn. for the Retarded*, 128 F.3d 1181, 1185 fn. 2 (7th Cir. 1997).

The Employer asserts that the petitioned-for multi-facility unit is presumptively inappropriate, invoking the Board's oft-cited rebuttable presumption that a single-facility unit is appropriate. See, e.g., *J&L Plate*, 310 NLRB 429 (1993). However, when a union seeks a multi-facility unit, the single-facility presumption is inapplicable. *NLRB v. Carson Cable TV*, 795 F.2d 879, 887 (9th Cir. 1986); see also *Capital Coors Co*., 309 NLRB 322 (1992). In other words, the presumption of appropriateness carries with it no corresponding presumption that all other units are inappropriate. As the court in *Carson Cable* explained:

> Where, as here, the union requests and the Board designates a multi-location unit as appropriate, the (single-facility) presumption simply has no application. The presumption does not preclude designation of a larger unit, but only works to assure that a Board determination that a smaller unit is appropriate will almost never be subject to challenge.

Id. at 887; *see also Macy's*, 361 NLRB No. 4, slip op. at 20 n.65 (Jul. 22, 2014) ("That a unit is presumptively appropriate in a particular setting does not mean that a different unit is presumptively *inappropriate*.") (emphasis in original); *Capital Coors Co.,* supra.

Because the Petitioner has requested a multi-facility unit comprising all of the janitorial and maintenance staff employed by the Employer within the city limits of San Francisco, the single-facility presumption is not applicable. I must therefore determine whether the petitioned-for unit is an appropriate one under the Board's generally applicable standards.

The Board determines whether a petitioned-for multi-facility unit is appropriate based on its evaluation of the community of interests among employees working at the different locations, including: (1) similarity in employee skills, duties, and working conditions; (2) functional integration of the business, including employee interchange; (3) centralized control of management and supervision; (4) geographical separation of facilities and collective-bargaining history; and 5.) extent of union organization and employee choice. *Capital Coors Co.,* supra; *NLRB v. Carson Cable TV,* supra. I find, as discussed in greater detail below, that the employees at the Sansome Complex and UN Plaza lack the requisite community of interest.

i. Employees at Both Locations Have Substantially Similar Skills, Duties, and Working Conditions.

I find that the employees in the petitioned-for unit have similar skills, duties, and working conditions. All of the employees at both locations perform janitorial work in an office setting. Although each building requires different cleaning products and equipment, the overall skills required are the same. Employees at the Sansome

Complex receive special training on interacting with tenants, but this training can be completed in thirty minutes. Nor does the special training required to clean the historical floors at the UN Plaza establish a meaningful distinction in skills between the two locations—the initial training for that task only takes two hours. Moreover, only two of the seven employees at the UN Plaza location receive that specialized training.

I also note that the employees at the two locations have, with limited exceptions, substantially similar terms and conditions of employment. Certainly, the two groups of employees are paid at different hourly rates, but this slight difference is attributed to the Employer's voluntary adoption of the wage rates spelled out in the Petitioner's collective-bargaining agreement. The employees otherwise receive comparable fringe benefits. I therefore find no meaningful difference in the employees' economic terms and conditions of employment. With respect to the employees' noneconomic terms and conditions of employment, the Employer's Employee Handbook sets rules and policies applicable to the employees at both locations, except to the extent superseded by the collective-bargaining agreement at the Sansome Complex.

ii. The Two Locations Are Not Functionally Integrated and Have No Interchange of Employees.

I find that the Sansome Complex and UN Plaza locations are not functionally integrated. The Sansome Complex and the UN Plaza building are geographically distinct operations, separated by a distance of approximately 2.1 miles. Each location is serviced under separate federal contracts covering different periods of performance. Cf. *Executive Resources Associates,* 301 NLRB 400, 401–02 (1991) (finding separate community of interest for groups of employees of a single employer working under separate government contracts on a single military base, where one contract expired

more than a year after the other). There is no interchange of cleaning products or equipment between the facilities, in part because each building has special requirements that preclude such interchange. In short, there is no functional integration of the operations at the two locations.

I also find that there is no interchange of employees between the locations. The undisputed evidence in the record shows that no employee from either location has ever been tasked to perform work at the other building. Although the Petitioner argued that such an interchange is feasible based on the similarity of the work performed, the Board determines community of interest based on actual interchange, not the mere potential for it. See *Essex Wire Corp*., 130 NLRB 450, 453 (1961) (finding no community of interest where jobs were "virtually interchangeable" but "there was in fact no interchange"); see also *Combustion Engineering*, 195 NLRB 909, 912 (1972).

The Employer argues that the need for security clearance to work at the Sansome Complex weighs against finding a community of interest, and while I agree, I find that this factor is not dispositive. Cf. *Cal-Cent. Press*, 179 NLRB 162, 164 (1969) (finding community of interest among employees with similar working conditions even though some of the employees possessed security clearances and had to be isolated from classified projects). However, the requirement for security-cleared employees does serve to restrict the transfer of UN Plaza employees to the Sansome Complex.

Overall, I find that there is no functional integration or interchange of employees between the two locations and conclude that this factor weighs against finding a community of interest among the employees in the petitioned-for unit.

iii. The Management and Supervision of the Employees in the Petitioned-For Unit is Highly Centralized.

Essentially, all of the Employer's managerial and supervisory functions for the two facilities at issue are centralized with the Regional Manager and Lutt, with the assistance of Lutt's management team. These higher-level managers make all personnel decisions with respect to employees at both locations. Although the Employer designates an employee at each site as a "site supervisor," neither party contends, and the evidence does not establish, that either of the employees so designated exercise any of the twelve supervisory indicia set forth in Section 2(11) of the Act. Although there was some testimony that the UN Plaza site supervisor directed the tasks of his coworkers, there was no evidence offered that the site supervisor did so "responsibly." See *Community Education Centers, Inc.*, 360 NLRB No. 17 (2014); citing *CGLM, Inc*., 350 NLRB 974, 974 fn. 2, 983–984 (2007), enfd. mem. 280 Fed. Appx. 366 (5th Cir. 2008); see also *Croft Metals, Inc.*, 348 NLRB 717, 722 fn. 13 (2006).

I therefore find that the Employer's Regional Manager, in coordination with Lutt and her team, exercises complete management control over the employees at its two San Francisco facilities, which weighs in favor of finding that the petitioned-for unit is appropriate.

iv. Geographical Separation of Facilities and Bargaining History.

The geographical distance between facilities is important as to whether it is feasible for all employees in a multi-location unit to participate without great difficulty in union activities. *See NLRB v. Sunset House,* 415 F.2d 545 (9th Cir.1969). I find that the geographical separation between the facilities—a distance of approximately two miles in

a densely populated, high-traffic urban environment—is not significant. Cf. *Capital Coors Co.*, supra at 325 (a distance of ninety miles between facilities did not preclude finding a community of interest). The evidence adduced at the hearing did not establish that the absence of employee interchange and functional integration is attributable to the distance between facilities or any resultant difficulty in transporting employees between the facilities.

The Petitioner presented evidence that, prior to January 2011, it represented another janitorial employer's employees at the two facilities at issue here in a single unit. It argues that the existence of that historical bargaining unit demonstrates that the petitioned-for unit is appropriate.

For its part, the Employer notes that it has already voluntarily recognized the Petitioner as the collective-bargaining representative of its Sansome Complex employees and has offered to abide by the terms of the Petitioner's multi-employer collective-bargaining agreement. Thus, it argues that the recent history of collective bargaining at the Sansome Complex supports a finding that the multi-facility unit sought is inappropriate. Accepting both parties' factual representations at face value, neither is accorded much weight.

The Petitioner's evidence of a prior bargaining relationship covering both the Sansome Complex and UN Plaza has little relevance due to the intervening four-year period in which the Petitioner has not represented employees at the UN Plaza, particularly where, as here, Petitioner has not presented any evidence that the previous employer structured its business similarly to the Employer here. Similarly, I find that the Employer's voluntary recognition of the Petitioner and the parties' fledgling collective-

bargaining relationship at the Sansome Complex is not sufficiently settled or established to significantly affect my decision. Cf. *Dezcon, Inc.,* 295 NLRB 109, 112 (1989) (finding that expired jurisdiction-wide collective-bargaining agreement was inconclusive because the parties' bargaining relationship was "insufficiently settled or established); *Capital Coors Co.,* supra (declining to rely on bargaining history where there was an intervening period during which employees were not represented). In sum, I find that the geographical separation between the facilities would permit for full employee participation in union activities. I further conclude that the parties' bargaining history does not bear on the determination of whether the unit sought is appropriate.

v. Extent of Union Organization and Employee Choice.

In evaluating community of interest, "the overriding policy of the Act is in favor of the interest in employees to be represented by a representative of their own choosing for the purpose of collective bargaining." *Judge & Dolph, Ltd.,* 333 NLRB 175, 185 (2001) (citing *NLRB v. Western & Southern Life Insurance Co.,* 391 F.2d 119, 123 (3d Cir. 1968), cert. denied 393 U.S. 978 (1968).) In considering the extent of Petitioner's organizing of the employees at the two facilities, I note that the UN Plaza employees have been without a collective-bargaining representative since July 1, 2013, when the Employer began operating at that location. The instant petition was not filed until after the Employer voluntarily recognized the Petitioner as the collective-bargaining representative of its Sansome Complex employees, who comprise nearly sixty percent of the petitioned-for unit. There is no evidence on the record to show whether and to what extent the Petitioner has attempted to organize the smaller group of UN Plaza employees, but I note that the Employer offered on the record to recognize the

Petitioner at the UN Plaza based on a majority showing. Tr. 41-42. As of the date of the hearing, at least, no such showing had been made.[9]

Under Section 9(c)(5) of the Act, the extent that employees have been organized may not be the controlling determinant of the appropriateness of a proposed bargaining unit, but it is a factor that plays "an affirmative part in such determinations." See e.g., *Acme Markets, Inc*., 328 NLRB 1208 (1999)(citing *Central Power & Light Co*., 195 NLRB 743 (1972)); *Audiovox Communications Corp*. 323 NLRB 647 (1997). Here, there is no evidence that the Petitioner has organized the minority group of UN Plaza employees. It has made no showing of interest among them.[10]

Turning to employee choice, there is no evidence that employees have expressed a desire to be included in a single bargaining unit with the Sansome Complex employees, that they prefer to be represented in a separate unit or, indeed, that they are aware of the instant Petition at all. Put simply, although "[e]mployee choice can tip the balance in determining which of two equally appropriate units should be preferred," I cannot discern the employees' wishes from this record. *Pacific Southwest Airlines,* 587 F.2d 1032, 1044 (1978). Accordingly, neither does employee choice "tip the balance" in favor of finding the existence of a community of interest between the UN Plaza employees and the existing Sansome Complex unit.

[9] Nevertheless, as discussed above, voluntary recognition, if it were to occur, would not bar the instant Petition.

[10] On this basis alone, it would appear that Board policy forecloses me from directing an election among the UN Plaza employees. See e.g., *Sperry Gyroscope Company*, 147 NLRB 988, 994 fn 17 (1964); *Brooklyn Union Gas Company*., 123 NLRB 441, 444 (1959); *The Hartford Electric Light Company*, 122 NLRB 1421 (1959). See also *Great Lakes Pipe Line, Co*., 92 NLRB 583 (1950)(the Board is duty bound "to prevent injustice being done to minority groups by….arbitrary inclusion of such groups in a larger unit wherein they would have no effective voice to secure the benefits of collective bargaining.")

In summary, I conclude that the petitioned-for unit is not an appropriate unit for collective bargaining. Although I find that the employees in the petitioned-for unit are subject to centralized management and supervision, and have similar skills, duties, and working conditions, the total absence of functional integration and interchange between the two locations and the fundamental concerns about the lack of any showing of interest among the minority group of UN Plaza employees to be represented by the Petitioner render the unit sought inappropriate. *Sperry Gyroscope Company*; *Brooklyn Union Gas Company*; *The Hartford Electric Light Company*; *Montana-Dakota Utilities, Co*., supra.

The lack of employee interchange is a particularly important factor, one which weighs substantially against a finding that the employees share a community of interest. *Jerry's Chevrolet, Cadillac, Inc.,* 344 NLRB 689, 693 (2005) (Liebman, M., dissenting) (lack of significant employee interchange between groups of employees is a "strong indicator" that employees enjoy a separate community of interest) (citing *Executive Resources Associates*, 301 NLRB 400, 401 (1991)); see also *First Security Services Corp*., 329 NLRB 235, 236 (1999) (describing lack of employee interchange as "critical factor" in assessing community of interest to rebut single-facility presumption); *Towne Ford Sales*, 270 NLRB 311, 311–12 (1984) (describing employee interchange as "especially important" factor in considering community of interest in accretion context).

In *Jerry's Cadillac*, the Board found that a multi-location unit comprising service departments at four adjacent car dealerships was the only appropriate unit despite the lack of meaningful employee interchange. 344 NLRB at 691. In doing so, the Board relied on the close geographic proximity, high level of functional integration,

centralization of labor relations, and the similarity of skills, pay, and other conditions among the service employees at the four locations. *Id.* Here, by contrast, the facilities sought to be included in the unit lack the geographical proximity and functional integration that might otherwise sufficiently balance out the complete lack of employee interchange between the two locations. Cf. *Capital Coors Co.*, supra (finding petitioned-for multi-location unit appropriate because of functional integration, interchange of employees, and similarity of working conditions). Indeed, the unit sought is inappropriate because there is a lack of functional interchange involving UN Plaza and the Sansome Complex and because the unit would consist of a heterogeneous grouping of UN Plaza employees who have absolutely no interchange with the Sansome Complex employees, nor any manifest interest in being represented by the Petitioner. After considering the "balanc[e] of salient factors" relevant to the designation of a multi-location bargaining unit,[11] I find the unit sought to be inappropriate.

I find, however, that a unit of the Employer's janitorial employees at the Sansome Complex is appropriate, and that the Employer's voluntary recognition of that unit does not bar a representation election. Accordingly, I shall direct an election in the unit set forth below:

III. CONCLUSION AND FINDINGS

Based on the entire record in this proceeding, I conclude and find as follows:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are affirmed.

[11]See *Spring City Knitting Co.,* 647 F.2d at 1016.

2. The Employer is engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and it will effectuate the purposes of the Act to assert jurisdiction in this case.

3. The Petitioner claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The following employees of the Employer constitute a unit appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time janitorial employees employed at 630 Sansome Street and 555 Battery Street, San Francisco, CA, EXCLUDING engineers, clerical, trash, and recycling staff, guards and supervisors as defined in the Act.

IV. DIRECTION OF ELECTION

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by Service Employees International Union, Local 87. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

A. Voting Eligibility

Eligible to vote in the election are those in the Unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees who worked an average of four or more hours per week

during the calendar quarter preceding the end date of the above-referenced payroll period are eligible to vote. See *Davison-Paxon,* 185 NLRB 21 (1970). Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

B. Employer to Submit List of Eligible Voters

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.,* 156 NLRB 1236 (1966*); NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the

full names and addresses of all the eligible voters. *North Macon Health Care Facility*, 315 NLRB 359, 361 (1994). The list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). This list may initially be used by me to assist in determining an adequate showing of interest. I shall, in turn, make the list available to all parties to the election.

To be timely filed, the list must be received in the Regional Office on or before **May 21, 2015.** No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted to the Regional Office by electronic filing through the Agency's website **www.nlrb.gov,**[12] by mail, by hand or courier delivery, or by facsimile transmission at (415) 356-5156. The burden of establishing the timely filing and receipt of the list will continue to be placed on the sending party.

Since the list will be made available to all parties to the election, please furnish a total of two copies of the list, unless the list is submitted by facsimile or e-mail, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

[12] To file the eligibility list electronically, go to www.nlrb.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu. When the E-File page opens, go to the heading **Regional, Subregional and Resident Offices** and click on the "File Documents" button under that heading. A page then appears describing the E-Filing terms. At the bottom of this page, check the box next to the statement indicating that the user has read and accepts the E-Filing terms and click the "Accept" button. Then complete the filing form with information such as the case name and number, attach the document containing the eligibility list, and click the Submit Form button. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Board's web site, www.nlrb.gov.

C. Notice of Posting Obligations

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for at least 3 working days prior to 12:01 a.m. of the day of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election notice. *Club Demonstration Services*, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

VII. RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington, DC by 5 p.m. EST on May 28, 2015. The request may be filed electronically through the Agency's web site, www.nlrb.gov, but may not be filed by facsimile.

DATED: May 14, 2015

/s/
Jill Coffman, Acting Regional Director
National Labor Relations Board
Region 20
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San Francisco, CA 94103